



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Friedrich Kueffner
Suite 910
317 Madison Avenue
New York, NY 10017

COPY MAILED

SEP 23 2004

OFFICE OF PETITIONS

In re Application of
Rzesnitek, Schmitt, and Reuter
Application No. 10/815,455
Filed: March 31, 2004
Attorney Docket No. BE-125
For: MONITORING SYSTEM FOR MONITORING THE
PROGRESS OF NEUROLOGICAL DISEASES

:
:
: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
:

This is a decision on the petition under 37 CFR 1.47(a) August 20, 2004

The petition under 37 CFR 1.47(a) is **dismissed**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Failure to respond will result in the abandonment of this application. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(a).

The above-identified application was filed on March 31, 2004, and was not accompanied by a properly executed oath or declaration and filing fee. On June 17, 2004, a Notice to File Missing Parts of Nonprovisional Application was mailed requiring an executed oath or declaration, payment of the filing fee, payment of surcharge, and payment of the fee associated with the filing of a specification written in a language other than English. The notice allowed an extendable period for reply of two months from its mailing date. The instant petition was filed on August 20, 2004, with a certificate of mailing dated August 18, 2004.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor(s) cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee,
- (4) a statement of the last known address of the non-signing inventor,

The instant petition lacks item (1) above.

As to item (1) sufficient proof was not provided that the entire application was sent to the non-signing inventor, not just the declaration and power of attorney. Guidance as to what is required to be sent to the non-signing before a refusal to sign can be alleged is found in the Manual of Patent Examining Procedure, Section 409.03(d) which reads, in pertinent part:

[b]efore a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor.

It is not apparent from the instant petition whether petitioner sent the non-signing inventor the entire application for his review and signature. Further, the copies of the cover letters for the correspondence petitioner sent to the non-signing inventor makes no mention of the entire application being enclosed. It is, therefore, concluded that item (1) above has not been satisfied.

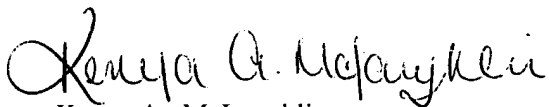
Petitioner is advised that an extension of time within the first month is necessary in order for the instant petition to be considered a timely response to the Notice to File Missing Parts of Nonprovisional Application. The notice allowed an extendable period for response of two months from its mailing date—June 17, 2004. The instant petition was not received until August 20, 2004, and the certificate of mailing was dated August 18, 2004. Any renewed petition filed must be accompanied by a request for an extension of time within the first month and the fee, or an authorization to charge a deposit account for the fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents,
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

Telephone inquiries should be directed to the undersigned (703) 305-0010.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions